

Department of Health
Notice of Rulemaking Hearing
Board of Osteopathic Examination
Division of Health Related Boards

There will be a hearing before the Tennessee Board of Osteopathic Examination to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 48-101-605, 48-101-608, 48-101-610, 48-101-618, 48-101-624, 48-101-628, 48-101-629, 48-101-630, 48-248-104, 48-248-202, 48-248-401, 48-248-404, 48-248-409, 48-248-501, 48-248-601, 48-248-602, 48-248-603, 63-6-204, 63-9-101, 63-9-104, 63-9-106, 63-9-109, 63-9-111, 63-9-112, 63-9-116, and Public Chapters 12, 286, 434 and 467 of the Public Acts of 2005. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 21st day of October, 2005.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact:

Jerry Kosten, Regulations Manager, Division of Health Related Boards, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-1010, (615) 532-4397.

Substance of Proposed Rules

Amendments

Rule 1050-2-.09 Officers, Records, Meeting Requests, Certificates of Fitness, Replacement Licenses, Consultants, Declaratory Orders and Screening Panels, is amended by deleting paragraph (5) in its entirety and substituting instead the following language, so that as amended, the new paragraph (5) shall read:

- (5) The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-9-101, and 63-9-111.

Rule 1050-2-.13 Specifically Regulated Areas and Aspects of Medical Practice, is amended by deleting paragraph (3) in its entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (11), so that as amended, the new paragraphs (3) and (11) shall read:

- (3) Prescription writing shall be governed by Tennessee Code Annotated, Section 63-9-116 and Title 53, Chapter 10, Part 2.
- (11) Use of Titles - Any person who possesses a valid, unsuspended and unrevoked license issued by the Board has the right to use the titles “Osteopathic Physician,” “Osteopathic Physician and Surgeon,” “Doctor of Osteopathic Medicine,” “Doctor of Osteopathy,” or “D.O.” and to practice osteopathic medicine, as defined in T.C.A. §§ 63-9-106. Violation of this rule regarding use of titles shall constitute unprofessional conduct and subject the licensee to disciplinary action.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-9-101, 63-9-106, 63-9-109, 63-9-111, 63-9-116, and Public Chapters 12, 434, and 467 of the Public Acts of 2005.

Rule 1050-2-.19 Medical Professional Corporations and Medical Professional Limited Liability Companies, is amended by deleting paragraphs (1), (2), and (3) in their entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (5), so that as amended, the new paragraphs (1), (2), (3), and (5) shall read:

- (1) Medical Professional Corporations (MPC) – Except as provided in this rule Medical Professional Corporations shall be governed by the provisions of Tennessee Code Annotated, Title 48, Chapter 101, Part 6.
 - (a) Filings – A MPC need not file its Charter or its Annual Statement of Qualifications with the Board.
 - (b) Ownership of Stock – With the exception of the health care professional combinations specifically enumerated in Tennessee Code Annotated, Section 48-101-610 only the following may form and own shares of stock in a foreign or domestic MPC doing business in Tennessee:
 - 1. Physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 6 and/or Chapter 9 or licensed in another state; and/or
 - 2. A foreign or domestic general partnership, MPC or M PLLC in which all partners, shareholders, members or holders of financial rights are either:

- (i) Physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 6 and/or Chapter 9 to practice medicine in Tennessee or physicians licensed by other states, or composed of entities which are directly or indirectly owned by such licensed physicians; and/or
 - (ii) Professionals authorized by Tennessee Code Annotated 48-101-610 or 48-248-401 or part 1109 of Section 1 of Public Chapter 286 of the Public Acts of 2005 to either own shares of stock in an MPC or be a member or holder of financial rights in an MPLLC; and/or
 - (iii) A combination of professionals authorized by subparts (i) and (ii).
- (c) Officers and Directors of Medical Professional Corporations -
 - 1. All, except the following officers, must be persons who are eligible to form or own shares of stock in a medical professional corporation as limited by T.C.A. § 48-101-610 (d) (1), (2), and/or (3) and subparagraph (1) (b) of this rule:
 - (i) Secretary;
 - (ii) Assistant Secretary;
 - (iii) Treasurer; and
 - (iv) Assistant Treasurer.
 - 2. With respect to members of the Board of Directors, only persons who are eligible to form or own shares of stock in a medical professional corporation as limited by T.C.A. § 48- 101-610 (d) (1), (2), and/or (3) and subparagraph (1) (b) of this rule shall be directors of a MPC.
- (d) Practice Limitations
 - 1. Physician incorporators, shareholders, officers, or directors of a MPC, acting individually or on behalf of, or collectively as the MPC, shall exercise only such authority as an "employing entity" may exercise pursuant to Tennessee Code Annotated, Section 63-6-204 (e)(1)(A), (B) and (C) regarding diagnosis, treatment and/or referral decisions made by any physician employed by or contracting with or otherwise providing medical services within the scope of their practice within the MPC.

2. A physician shall not enter into an employment, compensation, or other contractual arrangement with a MPC that may violate the code of ethics or which gives the MPC more authority over the physician's diagnosis, treatment and/or referral decisions than an "employing entity" may exercise pursuant to Tennessee Code Annotated, Section 63-6-204 (e)(1)(A), (B) and (C) regarding those decisions.
 3. Engaging in, or allowing another physician incorporator, shareholder, officer, or director, while acting on behalf of the MPC, to engage in, medical practice in any area of practice or specialty beyond that which is specifically set forth in the charter may be a violation of the code of ethics and/or either Tennessee Code Annotated, Sections 63-6-214 (b)(1) or 63-9-111 (b)(1).
 4. Nothing in these rules shall be construed as prohibiting any health care professional licensed pursuant to Tennessee Code Annotated, Title 63 from being an employee of or a contractor to a MPC.
 5. Nothing in these rules shall be construed as prohibiting a MPC from electing to incorporate for the purposes of rendering professional services within two (2) or more professions or for any lawful business authorized by the Tennessee Business Corporations Act so long as those purposes do not interfere with the exercise of independent medical judgment by the physician incorporators, directors, officers, shareholders, employees or contractors of the MPC who are practicing medicine as defined by Tennessee Code Annotated, Section 63-6-204.
 6. Nothing in these rules shall be construed as prohibiting a physician from owning shares of stock in any type of professional corporation other than a MPC so long as such ownership interests do not interfere with the exercise of independent medical judgment by the physician while practicing medicine as defined by Tennessee Code Annotated, Section 63-6-204.
- (2) Medical Professional Limited Liability Companies (MPLLC) – Except as provided in this rule Medical Professional Limited Liability Companies shall be governed by either the provisions of Tennessee Code Annotated, Title 48, Chapter 248 or Public Chapter 286 of the Public Acts of 2005.
- (a) Filings – Articles filed with the Secretary of State shall be deemed to be filed with the Board and no Annual Statement of Qualifications need be filed with the Board.

- (b) Membership – With the exception of the health care professional combinations specifically enumerated in Tennessee Code Annotated, Section 48-248-401 or part 1109 of Section 1 of Public Chapter 286 of the Public Acts of 2005 only the following may be members or holders of financial rights of a foreign or domestic M PLLC doing business in Tennessee:
 - 1. Physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 6 and/or Chapter 9 or licensed in other states; and/or
 - 2. A foreign or domestic general partnership, MPC or M PLLC in which all partners, shareholders, members or holders of financial rights are either:
 - (i) Physicians licensed pursuant to Tennessee Code Annotated Title 63, Chapter 6 and/or Chapter 9 to practice medicine in Tennessee or physicians licensed by other states or composed of entities which are directly or indirectly owned by such licensed physicians; and/or
 - (ii) Professionals authorized by Tennessee Code Annotated 48-101-610 or 48-248-401 or part 1109 of Section 1 of Public Chapter 286 of the Public Acts of 2005 to either own shares of stock in an MPC or be a member or holder of financial rights in an M PLLC; and/or
 - (iii) A combination of professionals authorized by subparts (i) and (ii).
- (c) Managers, Directors or Governors of a M PLLC
 - 1. All, except the following managers, must be persons who are eligible to form or become members or holders of financial rights of a medical professional limited liability company as limited by T.C.A. § 48-248-401 and subparagraph (2) (b) of this rule:
 - (i) Secretary
 - (ii) Treasurer
 - 2. Only persons who are eligible to form or become members or holders of financial rights of a medical professional limited liability company as limited by T.C.A. § 48-248-401 and subparagraph (2) (b) of this rule shall be allowed to serve as a director, or serve on the Board of Governors of a M PLLC.

(d) Practice Limitations

1. Physician members or holders of financial rights, managers, directors, or governors of a MPLLC, acting individually or on behalf of, or collectively as the MPLLC, shall exercise only such authority as an "employing entity" may exercise pursuant to T.C.A. § 63-6-204 (e)(1)(A), (B) and (C) regarding diagnosis, treatment and/or referral decisions made by any physician employed by or contracting with or otherwise providing medical services within the scope of their practice within the MPLLC.
2. A physician shall not enter into an employment, compensation, or other contractual arrangement with a MPLLC that may violate the code of ethics or which gives the MPLLC more authority over the physician's diagnosis, treatment and/or referral decisions than an "employing entity" may exercise pursuant to T.C.A. § 63-6-204 (e)(1)(A), (B) and (C) regarding those decisions.
3. Engaging in, or allowing another physician member, officer, manager, director, or governor, while acting on behalf of the MPLLC, to engage in, medical practice in any area of practice or specialty beyond that which is specifically set forth in the articles of organization may be a violation of the code of ethics and/or either Tennessee Code Annotated, Sections 63-6- 214 (b) (1) or 63-9-111 (b) (1).
4. Nothing in these rules shall be construed as prohibiting any health care professional licensed pursuant to Tennessee Code Annotated, Title 63 from being an employee of or a contractor to a MPLLC.
5. Nothing in these rules shall be construed as prohibiting a MPLLC from electing to form for the purposes of rendering professional services within two (2) or more professions or for any lawful business authorized by the Tennessee Business Corporations Act so long as those purposes do not interfere with the exercise of independent medical judgment by the physician members or holders of financial rights, governors, officers, managers, employees or contractors of the MPLLC who are practicing medicine as defined by Tennessee Code Annotated, Section 63-6-204.
6. Nothing in these rules shall be construed as prohibiting a physician from being a member of any type of professional limited liability company other than a MPLLC so long as such membership interests do not interfere with the exercise of independent medical

judgment by the physician while practicing medicine as defined by Tennessee Code Annotated, Section 63-6-204.

7. All MPLLCs formed in Tennessee pursuant to Tennessee Code Annotated, Section 48-248-104 or Public Chapter 286 of the Public Acts of 2005, to provide services only in states other than Tennessee shall annually file with the Board a notarized statement that they are not providing services in Tennessee.
- (3) Dissolution - The procedure that the Board shall follow to notify the attorney general that a MPC or a MPLLC has violated or is violating any provision of Title 48, Chapters 101 and/or 248 or Public Chapter 286 of the Public Acts of 2005, shall be as follows but shall not terminate or interfere with the secretary of state's authority regarding dissolution pursuant to Tennessee Code Annotated, Sections 48-101-624 or 48-248-409.
- (a) Service of a written notice of violation by the Board on the registered agent of the MPC and/or MPLLC or the secretary of state if a violation of the provisions of Tennessee Code Annotated, Title 48, Chapters 101 and/or 248 or Public Chapter 286 of the Public Acts of 2005 occurs.
 - (b) The notice of violation shall state with reasonable specificity the nature of the alleged violation(s).
 - (c) The notice of violation shall state that the MPC and/or MPLLC must, within sixty (60) days after service of the notice of violation, correct each alleged violation or show to the Board's satisfaction that the alleged violation(s) did not occur.
 - (d) The notice of violation shall state that, if the Board finds that the MPC and/or MPLLC is in violation, the attorney general will be notified and judicial dissolution proceedings may be instituted pursuant to Tennessee Code Annotated, Title 48.
 - (e) The notice of violation shall state that proceedings pursuant to this section shall not be conducted in accordance with the contested case provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5 but that the MPC and/or MPLLC, through its agent(s), shall appear before the Board at the time, date, and place as set by the Board and show cause why the Board should not notify the attorney general and reporter that the organization is in violation of the Act or these rules. The Board shall enter an order that states with reasonable particularity the facts describing each violation and the statutory or rule reference of each violation. These proceedings shall constitute the conduct of administrative rather than disciplinary business.

- (f) If, after the proceeding the Board finds that a MPC and/or MPLLC did violate any provision of Title 48, Chapters 101 and/or 248 or these rules, and failed to correct said violation or demonstrate to the Board's satisfaction that the violation did not occur, the Board shall certify to the attorney general and reporter that it has met all requirements of either Tennessee Code Annotated, Sections 48-101-624 (1) - (3) and/or 48-248-409 (1)-(3) and/or Public Chapter 286 of the Public Acts of 2005.
- (5) The authority to own shares of stock or be members or holders of financial rights in an MPC or an MPLLC granted by statute or these rules to professionals not licensed in this state shall in no way be construed as authorizing the practice of any profession in this state by such unlicensed professionals.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 48-101-605, 48-101-608, 48-101-610, 48-101-618, 48-101-624, 48-101-628, 48-101-629, 48-101-630, 48-248-104, 48-248-202, 48-248-401, 48-248-404, 48-248-409, 48-248-501, 48-248-601, 48-248-602, 48-248-603, 63-6-204, 63-9-101, 63-9-104, 63-9-111, and Public Chapter 286 of the Public Acts of 2005.

Rule 1050-3-.01 Definitions, is amended by deleting paragraphs (2) and (3) in their entirety and substituting instead the following language, so that as amended, the new paragraphs (2) and (3) shall read:

- (2) Full Certification - Certification obtained by submitting certification issued by the A.R.R.T. which will enable the holder to perform, except for bone densitometry, any and all procedures or functions in a physician's office.
- (3) Limited Certification - Certification issued by the Tennessee Board of Osteopathic Examination which enables the holder to perform only those radiological procedures or functions intended for the body areas or specialty indicated on the issued certification, other than those procedures involving the administration of contrast media.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-9-101 and 63-9-112.

Rule 1050-3-.02 Scope of Practice, is amended by deleting paragraph (4) in its entirety and substituting instead the following language, so that as amended, the new paragraph (4) shall read:

- (4) A.R.R.T. certificate holders are fully certified and may perform any and all radiographic procedures or functions in a physician's office that are within the American Society of Radiologic Technologists' (A.S.R.T.) scope of practice for radiographers.
 - (a) Performing bone densitometry is not considered to be within the A.S.R.T.'s scope of practice for radiographers.

- (b) A.R.R.T. certificate holders who wish to perform bone densitometry and who receive initial certification as an x-ray operator in Tennessee after September 1, 2006 are required to:
 - 1. obtain the A.R.R.T.'s certification in bone densitometry (BD) by successfully completing the A.R.R.T.'s Bone Densitometry Clinical Experience Requirements; or
 - 2. obtain limited certification in bone densitometry, as provided in this chapter.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-9-101 and 63-9-112.

Rule 1050-3-.05 Obtaining and Upgrading Full and Limited Certification, is amended by deleting part (1) (b) 1. and subparagraph (3) (a) in their entirety and substituting instead the following language, so that as amended, the new part (1) (b) 1. and the new subparagraph (3) (a) shall read:

- (1) (b) 1. An applicant shall cause to be submitted from the radiological educational course director to the Board Administrative Office certification of any course(s) required by rule 1050-3-.07(2) which shall include certification from the clinical training supervisor(s) of successful completion of the required clock hours of clinical training for each specialty area in which certification is sought.
- (3) (a) Having the director of a Board approved specialty area(s) radiological education course(s) submit directly to the Board Administrative Office documentation indicating the additional clock hours and type of education received as required by rule 1050-3-.07 (2) (b) and (c) along with certification from the clinical training supervisor(s) of successful completion of the clock hours of clinical training for each separate area in which certification is sought.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-9-101, and 63-9-112.

Rule 1050-3-.07 Educational Course, Approval and Curriculum for Limited Certification, is amended by deleting part (2) (c) 1. in its entirety and substituting instead the following language, so that as amended, the new part (2) (c) 1. shall read:

- (2) (c) 1. Clinical Training - Defined as "hands-on" observation and participation in the production of diagnostic radiographs. Clinical training must be supervised by either a residency-trained radiologist, or by a licensed physician in conjunction and consultation with a fully-licensed and registered operator (A.R.R.T. technologist) with at least three (3) years experience when appropriate. This training shall consist of at least sixty (60) clock hours for each specialty area in which certification is sought.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-9-101, and 63-9-112.

Rule 1050-3-.08 Examinations for Certification, is amended by deleting part (2) (a) 3. in its entirety, and is further amended by deleting subparagraph (3) (b) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (3) (b) shall read:

(3) (b) It is the applicant's responsibility to attach the certified passing test results to the application for certification.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-9-101, and 63-9-112.

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Contact who can answer questions concerning this notice of rulemaking hearing, technical contact for disk acquisition, and person who will approve final copy for publication: Jerry Kosten, Regulations Manager, Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010 615-532-4397.

I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Tennessee Board of Osteopathic Examination.

Robbie H. Bell, Director
Health Related Boards

Subscribed and sworn to before me this the 24th day of August, 2005.

Notary Public

My commission expires on the 25th day of March, 2006.

The notice of rulemaking set out herein was properly filed in the Department of State on the ____ day of _____, 2005.

Riley C. Darnell
Secretary of State

By: _____